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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 BRANDY RENAY BRAMMER,  
12 Plaintiff,  
13 v.  
14 CAROLYN W. COLVIN, Acting  
15 Commissioner of Social  
16 Security,  
Defendant.

Case No. EDCV 15-0756 SS

**MEMORANDUM DECISION AND ORDER**

17  
18  
19 **I.**

20 **INTRODUCTION**  
21

22 Brandy Renay Brammer ("Plaintiff") seeks review of the final  
23 decision of the Commissioner of the Social Security  
24 Administration (the "Commissioner" or the "Agency") denying her  
25 application for Disability Insurance Benefits ("DIB") and  
26 Supplement Security Income ("SSI"). The parties consented,  
27 pursuant to 28 U.S.C. § 636(c), to the jurisdiction of the  
28 undersigned United States Magistrate Judge.

1 For the reasons stated below, the decision of the Commissioner is  
2 REVERSED and REMANDED for further administrative proceedings  
3 consistent with this decision.

4  
5 **II.**

6 **PROCEDURAL HISTORY**

7  
8 On May 21, 2009, Plaintiff filed for DIB and SSI, claiming  
9 that she became disabled on September 25, 1999. (Administrative  
10 Record ("AR") 264-67, 277-83). Plaintiff based her alleged  
11 disability on "[l]ower back injury, bu[l]ging disc,  
12 deg[enerative] disc,[l]nerve pain, failed surgery, pinched  
13 nerves." (AR 313). The Agency denied Plaintiff's applications  
14 on August 22, 2009 (AR 131-37) and upon reconsideration on March  
15 18, 2010. (AR 140-44).

16  
17 Plaintiff requested a hearing, which was held before  
18 Administrative Law Judge ("ALJ") Jay E. Levine on May 12, 2011.  
19 (AR 81-107). On June 24, 2011, ALJ Levine determined that  
20 Plaintiff was not disabled. (AR 113-22).

21  
22 Plaintiff filed a request for review of ALJ Levine's  
23 decision, which the Appeals Council (the "Council") granted. (AR  
24 127). On November 16, 2012, the Council vacated the ALJ's  
25 decision and remanded the matter for further proceedings. (AR  
26 127-29). Upon remand, the Council directed the ALJ to further  
27 consider whether Plaintiff was capable of performing any of her  
28 past relevant work, further evaluate Plaintiff's mental

1 impairment, and give further consideration to Plaintiff's maximum  
2 RFC during the entire period at issue. (AR 128). Further, if  
3 necessary the ALJ was required to obtain evidence from a  
4 vocational expert. (AR 129).

5  
6 On April 25, 2013, ALJ Tamara Turner-Jones (the "ALJ")  
7 conducted a hearing following the Council's remand order. (AR  
8 41-80). On June 14, 2013, the ALJ issued an unfavorable  
9 decision. (AR 13-28). Plaintiff sought review before the  
10 Council (AR 7-9), which the Council denied on February 20, 2015.  
11 (AR 1-4). The ALJ's determination thus became the final decision  
12 of the Commissioner. Plaintiff filed the instant action on April  
13 17, 2015.

### 14 15 **III.**

#### 16 **FACTUAL BACKGROUND**

17  
18 Plaintiff was born on February 20, 1980. (AR 26). She was  
19 nineteen years old as of the alleged disability onset date and  
20 twenty-three years old at the time of her hearing before the ALJ.  
21 (AR 43). In September 1999, Plaintiff suffered a work-related  
22 injury. (AR 434). Plaintiff's last-insured date was June 30,  
23 2003. (AR 15).

1     **A.     Relevant Medical Evidence**

2

3           Dr. Timothy P. Gray, an orthopaedic surgeon, provided

4     Plaintiff treatment of one to two sessions per month between

5     January 2000 to April 2002 in connection with her 1999 workers'

6     compensation claim.     (AR 370-441).     Dr. Gray primarily treated

7     Plaintiff for her complaints of low back pain with disk

8     degeneration and bilateral leg pain.     (Id.).     Dr. Gray noted that

9     an October 1999 MRI of Plaintiff's lumbar spine revealed a

10    "central disk herniation" and "some minimal degenerative changes"

11    at L4-5.     (AR 437).     Dr. Gray treated Plaintiff's pain with inter

12    alia, physical therapy, injections, pain management, a back

13    brace, and medications, including Darvocet, Vistaril, Vioxx,

14    Tylenol #3, Tylenol #4, Prozac, Ultracet, and Paxil.     (AR 371-73,

15    377-80, 383-84, 387-88, 391, 393-94, 397-98, 401, 403, 406-07,

16    408, 411, 415, 419, 423, 425, 426, 429, 431, 432, 438-39).     On

17    September 29, 2000, Plaintiff underwent lumbar diskograms which

18    revealed positive pain and an annular tear at L4-5 and possibly

19    at L5-S1.     (AR 409-10).     On December 5, 2000, Plaintiff underwent

20    an IDET procedure at L4-5 and L5-S1.     (AR 403, 405).     In June

21    2001, Plaintiff began to complain of low back pain again, and

22    continued to do so through April 2002, Dr. Gray's last treatment

23    note of record.     (AR 371-400).     While he treated Plaintiff, Dr.

24    Gray primarily placed Plaintiff on modified work duty, limited to

25    sedentary or light work in two to four hour shifts.     (AR 371-73,

26    378-79, 393, 398, 401-02, 426-27, 429, 431-32).

27

28

1 Dr. Thomas Haider, Plaintiff's more recent treating  
2 physician, who also treated Plaintiff in connection with her  
3 workers' compensation claim, saw Plaintiff at least sixty times  
4 between October 2004 to April 2013 for complaints of low back and  
5 leg pain. (AR 567-673, 799-864). On November 2, 2006, Dr.  
6 Haider performed on Plaintiff a laminotomy, discectomy, and  
7 foraminotomy at L4-5 on the right side. (AR 494-95). After the  
8 surgery, Plaintiff reported worsening of symptoms. (AR 581, 587,  
9 591, 597, 603-04, 606, 613-14, 619, 621). Dr. Haider reported  
10 that a January 2008 radiograph of Plaintiff's cervical spine  
11 showed "straightening as well as reversal of cervical lordosis  
12 [and] spondylosis of the C2-C4 levels." (AR 599). A July 2008  
13 MRI of Plaintiff's lumbar spine showed "continuation of prominent  
14 posterior disc bulge measuring 4 mm in size at the level of L4-  
15 5," "bilateral foraminal stenosis," "disc dessication" at L4-5,  
16 "mild bilateral facet arthropathy" at L3-4 and L5-S1, and  
17 "diffuse disc desiccation" at L3-4, L4-5, and L5-S1. (AR 582).

18  
19 Between 2004 and 2008, Dr. Haider treated Plaintiff with  
20 inter alia, trigger point injections (AR 585, 602 647) and  
21 narcotic pain medications, including Fentanyl patches, Norco,  
22 Duragesics, Lorcet, and Ultram. (AR 582, 589, 592, 595, 599,  
23 605, 607, 613, 615, 622, 625-26, 627, 636, 638, 645, 649, 651,  
24 653, 655, 657, 661, 663, 665, 669-70). In October 2008, due to  
25 difficulty controlling her medications, Plaintiff entered an in-  
26 patient detox program. (AR 576, 579). Between 2009 and 2013,  
27 Dr. Haider treated Plaintiff with trigger point injections, heat  
28 wraps, and non-narcotic pain medications. (AR 569, 802, 810,

1 812-13, 820, 823-25, 829-30, 832, 837-38, 839-40, 843, 845-46,  
2 853). A September 2009 MRI of Plaintiff's lumbar spine revealed  
3 "significant right sided forminal stenosis due to 4mm broad based  
4 disc bulging" and "moderate to severe disc dessication at L4-5."  
5 (AR 812). Based on a December 2011 MRI of Plaintiff's lumbar,  
6 Dr. Haider noted that there was "progression of the severe disc  
7 space collapse at L4-5," "central and forminal stenosis secondary  
8 to a 3.8 mm circumferential disc bulge as well as bilateral facet  
9 arthrosis," and "degenerative disc disease with a 2.5 mm  
10 circumferential disc bulge" at L5-S1. (AR 821). An April 2013,  
11 MRI of Plaintiff's lumbar spine revealed "[r]ight laminectomy at  
12 L4," "[g]rade 1 retrolisthesis of L4," a "3.8 mm circumferential  
13 disc bulge" at L4-5, "[b]ilateral facet arthrosis and moderate  
14 bilateral neural foraminal narrowing" at L4-5 and L5-S1, and a  
15 "2.8 mm disc bulge" at L5-S1. (AR 855). An April 2013  
16 eletrodiagnostic report also revealed mild to moderate right L5  
17 and S1 sensory radiculopathy. (AR 856). Between 2005 and 2013,  
18 Dr. Haider's progress notes repeatedly indicated that Plaintiff  
19 had difficulty walking, difficulty changing positions and getting  
20 onto the examining table, tenderness over the low back, muscle  
21 spasm, restricted motion with pain of the lumbar, guarding with  
22 motion, antalgic gait, and/or positive straight leg test  
23 bilaterally. (AR 568, 572, 576, 578, 582, 585, 588, 592, 595,  
24 598, 602, 604, 606, 610, 612, 614, 619, 629, 631, 635, 637, 640,  
25 643, 647, 653, 655, 661, 665, 800, 802, 810, 812, 816, 818, 823,  
26 828, 830, 832).

1 On April 23, 2013, Dr. Haider completed a "Physical Residual  
2 Capacity Question." (AR 860-64). In the questionnaire, Dr.  
3 Haider diagnosed Plaintiff with "status post laminectomy lumbar  
4 surgery in 2006." (AR 860). He noted his clinical and objective  
5 findings included positive MRI, nerve conduction, and x-ray  
6 findings. (Id.). Plaintiff's treatment included short courses  
7 of physical therapy, medications, injections, MRIs, and surgery.  
8 (AR 861). He opined that Plaintiff could occasionally carry ten  
9 pounds. (AR 862). She has significant limitations in doing  
10 repetitive reaching, handling or fingering. (Id.). Plaintiff  
11 has marked limitation in bending and twisting at the waist. (AR  
12 862-63). She can walk one block without rest and can  
13 continuously sit and stand for fifteen minutes every hour. (AR  
14 863). Plaintiff can sit for twenty minutes and stand for fifteen  
15 minutes in a less than two-hour period. (Id.). She can also sit  
16 for forty minutes and stand for twenty-five minutes in a two-hour  
17 period. (Id.). Plaintiff must walk every fifteen minutes for  
18 ten minutes each time. (Id.). She would also need to shift  
19 positions and take unscheduled breaks. (Id.). Finally,  
20 Plaintiff would be absent from work more than three times a month  
21 due to her impairments or treatment. (AR 864).

## IV.

## THE FIVE-STEP SEQUENTIAL EVALUATION PROCESS

To qualify for disability benefits, a claimant must demonstrate a medically determinable physical or mental impairment that prevents her from engaging in substantial gainful activity and that is expected to result in death or to last for a continuous period of at least twelve months. Reddick v. Chater, 157 F.3d 715, 721 (9th Cir. 1998) (citing 42 U.S.C. § 423(d)(1)(A)). The impairment must render the claimant incapable of performing the work she previously performed and incapable of performing any other substantial gainful employment that exists in the national economy. Tackett v. Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999) (citing 42 U.S.C. § 423(d)(2)(A)).

To decide if a claimant is entitled to benefits, an ALJ conducts a five-step inquiry. 20 C.F.R. §§ 404.1520, 416.920. The steps are:

- (1) Is the claimant presently engaged in substantial gainful activity? If so, the claimant is found not disabled. If not, proceed to step two.
- (2) Is the claimant's impairment severe? If not, the claimant is found not disabled. If so, proceed to step three.
- (3) Does the claimant's impairment meet or equal one of the specific impairments described in 20 C.F.R. Part 404, Subpart P, Appendix 1? If so,



1 the claimant is found disabled. If not, proceed  
2 to step four.

3 (4) Is the claimant capable of performing her past  
4 work? If so, the claimant is found not disabled.  
5 If not, proceed to step five.

6 (5) Is the claimant able to do any other work? If  
7 not, the claimant is found disabled. If so, the  
8 claimant is found not disabled.

9  
10 Tackett, 180 F.3d at 1098-99; see also Bustamante v. Massanari,  
11 262 F.3d 949, 953-54 (9th Cir. 2001) (citations omitted); 20  
12 C.F.R. §§ 404.1520(b)-(g)(1) & 416.920(b)-(g)(1).

13  
14 The claimant has the burden of proof at steps one through  
15 four, and the Commissioner has the burden of proof at step five.  
16 Bustamante, 262 F.3d at 953-54. Additionally, the ALJ has an  
17 affirmative duty to assist the claimant in developing the record  
18 at every step of the inquiry. Id. at 954. If, at step four, the  
19 claimant meets her burden of establishing an inability to perform  
20 past work, the Commissioner must show that the claimant can  
21 perform some other work that exists in "significant numbers" in  
22 the national economy, taking into account the claimant's residual  
23 functional capacity ("RFC"), age, education, and work experience.  
24 Tackett, 180 F.3d at 1098, 1100; Reddick, 157 F.3d at 721; 20  
25 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1). The Commissioner may do  
26 so by the testimony of a VE or by reference to the Medical-  
27 Vocational Guidelines appearing in 20 C.F.R. Part 404, Subpart P,  
28 Appendix 2 (commonly known as "the Grids"). Osenbrock v. Apfel,

1 240 F.3d 1157, 1162 (9th Cir. 2001). When a claimant has both  
2 exertional (strength-related) and non-exertional limitations, the  
3 Grids are inapplicable and the ALJ must take VE testimony. Moore  
4 v. Apfel, 216 F.3d 864, 869 (9th Cir. 2000) (citing Burkhart v.  
5 Bowen, 856 F.2d 1335, 1340 (9th Cir. 1988)).

6  
7 **V.**

8 **THE ALJ'S DECISION**

9  
10 The ALJ employed the five-step sequential evaluation  
11 process. At step one, the ALJ found that Plaintiff had not  
12 engaged in substantial gainful employment since her alleged onset  
13 date of September 25, 1999. (AR 15). At step two, the ALJ found  
14 that Plaintiff had the severe impairments of degenerative disc  
15 disease of the lumbar spine, status post laminotomy and  
16 diskectomy, sprain/strain of the cervical spine, asthma, and  
17 obesity. (AR 16).

18  
19 At step three, the ALJ found that Plaintiff did not have an  
20 impairment or combination of impairments that met or medically  
21 equaled the severity of an impairment listed in 20 C.F.R. Part  
22 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,  
23 404.1526, 416.920(d), 416.925 and 416.926). (AR 18). The ALJ  
24 then found that Plaintiff had the following RFC:

25 [Plaintiff] has the residual functional capacity to  
26 perform a range of sedentary work as defined in 20 CFR  
27 404.1567(a) and 416.967(a) and SSR 83-10 specifically  
28

1 as follows: [Plaintiff] can lift and/or carry up to 10  
2 pounds; she can stand and/or walk for two hours out of  
3 an eight-hour workday with customary breaks; she can  
4 sit for six hours out of an eight-hour workday with  
5 customary breaks; she can occasionally kneel, stoop,  
6 crawl, or crouch; she can occasionally climb ramps or  
7 stairs, but she can never climb ladders, ropes and  
8 scaffolds; she can [] frequently use the hands for  
9 fine and gross manipulations; she can occasionally  
10 reach overhead bilaterally (above shoulder level); she  
11 can frequently rotate the neck fully from side to  
12 side; she must avoid exposure to unprotected heights  
13 and dangerous machinery; she must avoid concentrated  
14 exposure to extremely cold temperatures and pulmonary  
15 irritants such as dusts, fumes, gases, and odors;  
16 [Plaintiff] can sustain concentration, attention,  
17 persistence and pace in at least two-hour blocks of  
18 time; and she can interact appropriately with  
19 coworkers, supervisors, and the general public; due to  
20 the side effects of medication and chronic pain,  
21 [Plaintiff] is limited to unskilled tasks and she will  
22 be off-task for five percent of the workday.

23  
24 (Id.).

1 In making this finding, the ALJ considered Plaintiff's  
2 subjective allegations, but did not find them fully credible.  
3 (AR 20-25). The ALJ also noted that:

4  
5 No single assessment has been completely adopted as  
6 the [RFC] determined here. In viewing the totality of  
7 the evidence in a light most favorable to [Plaintiff],  
8 the undersigned has assessed those specific  
9 restrictions on a function-by-function basis that are  
10 best supported by the objective evidence as a whole.  
11 The undersigned has also more than generously  
12 considered [Plaintiff's] subjective complaints of  
13 chronic pain and problems with her neck and upper  
14 extremities. The [RFC] assessed herein more than  
15 accommodates for [Plaintiff's] actual limitations.

16  
17 (AR 26).

18  
19 At step four, the ALJ found that Plaintiff has no past  
20 relevant work. (Id.). At step five, the ALJ found that,  
21 considering Plaintiff's age, education, work experience and RFC,  
22 she could perform jobs that exist in significant numbers in the  
23 national economy. (Id.). Based on the VE's testimony, the ALJ  
24 concluded that Plaintiff could perform the requirements of lens  
25 gauger, table worker, addresser, surveillance system monitor, and  
26 bench assembler. (AR 27). Accordingly, the ALJ found that  
27 Plaintiff was not disabled through the date of the decision. (AR  
28 28).

## VI.

## STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), a district court may review the Commissioner's decision to deny benefits. The court may set the decision aside when the ALJ's findings are based on legal error or are not supported by substantial evidence in the record as a whole. Aukland v. Massanari, 257 F.3d 1033, 1035 (9th Cir. 2001) (citing Tackett, 180 F.3d at 1097). "Substantial evidence is more than a scintilla, but less than a preponderance." Reddick, 157 F.3d at 720 (citing Jamerson v. Chater, 112 F.3d 1064, 1066 (9th Cir. 1997)). It is "relevant evidence which a reasonable person might accept as adequate to support a conclusion." Id. (citing Jamerson, 112 F.3d at 1066; Smolen v. Chater, 80 F.3d 1273, 1279 (9th Cir. 1997)).

To determine whether substantial evidence supports a finding, the court must "'consider the record as a whole, weighing both evidence that supports and evidence that detracts from the [Commissioner's] conclusion.'" Aukland, 257 F.3d at 1035 (quoting Penny v. Sullivan, 2 F.3d 953, 956 (9th Cir. 1993)). If the evidence can reasonably support either affirming or reversing that conclusion, the court may not substitute its judgment for the Commissioner's. Reddick, 157 F.3d at 720-21 (citing Flaten v. Sec'y, 44 F.3d 1453, 1457 (9th Cir. 1995)).

## VII.

## DISCUSSION

Plaintiff contends that the Commissioner's decision should be overturned for two reasons. First, Plaintiff contends the ALJ did not properly consider the opinion of treating physicians, Dr. Gray and Dr. Haider, in determining Plaintiff's RFC. (Plaintiff's Memorandum in Support of Complaint (the "MSC"), Dkt. No. 14, at 4-9; Plaintiff's Reply Memorandum in Support of Complaint ("Reply"), Dkt. No. 16, at 3-5). Second, Plaintiff claims that the ALJ did not properly consider her subjective pain testimony. (MSC at 9-13; Reply at 5-7). Because the Court concludes that the ALJ did not properly consider Plaintiff's treating physicians' opinion, it is unnecessary to address the remaining issue raised by Plaintiff.

**The ALJ Failed To Properly Consider The Opinions Of Plaintiff's Treating Physicians In Determining Plaintiff's Residual Functional Capacity**

Social Security regulations require the ALJ to consider all relevant medical evidence when determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520b, 416.927(c). The opinions of treating physicians are entitled to special weight because the treating physician is hired to cure and has a better opportunity to know and observe the claimant as an individual. Connett v. Barnhart, 340 F.3d 871, 874 (9th Cir. 2003); Thomas v. Barnhart, 278 F.3d 947, 956-57 (9th Cir. 2002); Magallanes v. Bowen, 881

1 F.2d 747, 751 (9th Cir. 1989). Where the treating doctor's  
2 opinion is not contradicted by another doctor, it may be rejected  
3 only for "clear and convincing" reasons. Lester v. Chater, 81  
4 F.3d 821, 830 (9th Cir. 1995) (as amended). Even if the treating  
5 physician's opinion is contradicted by another doctor, the ALJ  
6 may not reject this opinion without providing specific,  
7 legitimate reasons, supported by substantial evidence in the  
8 record. Id. at 830-31; see also Orn v. Astrue, 495 F.3d 625, 632  
9 (9th Cir. 2007); Ryan v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198  
10 (9th Cir. 2008).

11  
12 **1. Dr. Timothy P. Gray**

13  
14 Plaintiff argues that the "ALJ was correct in stating that  
15 Dr. Gray's records indicate that [Plaintiff] was released to  
16 perform primarily sedentary work," however, the ALJ failed to  
17 properly consider Dr. Gray's conclusion that Plaintiff would be  
18 limited to working at that level only for two to four hours per  
19 day. (MSC at 4-9; Reply at 3-5). The Court agrees.

20  
21 In determining Plaintiff's RFC, the ALJ noted that she gave  
22 "significant weight, but not controlling weight to the opinions  
23 expressed by Dr. Gray." (AR 25). The ALJ explained that  
24 although Dr. Gray "felt throughout the workers' compensation  
25 records that [Plaintiff] could perform at least sedentary work .  
26 . . [s]ince his assessments of [Plaintiff's] capacity was done  
27 within the workers' compensation setting and do not reflect the  
28 specific function-by-function residual functional capacity

1 required by the Regulations, it is not accorded controlling  
2 weight." (Id.). Thus, the ALJ implicitly rejected Dr. Gray's  
3 findings that Plaintiff was limited to shifts of two to four  
4 hours, and failed to provide specific and legitimate reasons for  
5 doing so. The ALJ is required to consider all relevant medical  
6 evidence when determining whether a claimant is disabled. 20  
7 C.F.R. §§ 404.1520b, 416.927(c). The ALJ is also required to  
8 assess whether a claimant has the ability to work on a sustained  
9 basis. Reddick, 157 F.3d at 724. Thus, merely because Dr.  
10 Gray's opinion did not include a function-by-function RFC  
11 assessment was not a specific and legitimate reason to reject his  
12 opinion.

13  
14 The ALJ also has a duty to translate Dr. Gray's workers'  
15 compensation findings into Social Security terms. Macri v.  
16 Chater, 93 F.3d 540, 544 (9th Cir. 1996); Desrosiers v. Secretary  
17 of Health & Human Services, 846 F.2d 573, 576 (9th Cir. 1988);  
18 Booth, 181 F. Supp. 2d at 1104. Although workers' compensation  
19 disability ratings are not controlling in Social Security cases,  
20 an ALJ must nevertheless evaluate medical opinions stated in  
21 workers' compensation terminology just as he would evaluate any  
22 other medical opinion. Id. The ALJ must "translate" terms of art  
23 contained in such medical terminology in order to accurately  
24 assess the implications of those opinions for the Social Security  
25 disability determination. See Desrosiers, 846 F.2d at 576.  
26 "While the ALJ's decision need not contain an explicit  
27 'translation,' it should at least indicate that the ALJ  
28



1 recognized the differences between the relevant state workers'  
2 compensation terminology, on the one hand, and the relevant  
3 Social Security disability terminology, on the other hand, and  
4 took those differences into account in evaluating the medical  
5 evidence.'" Booth, 181 F. Supp. 2d at 1105. Here, although Dr.  
6 Gray made findings relevant to his workers' compensation  
7 evaluation of Plaintiff, they were not translated for determining  
8 Plaintiff's eligibility for social security benefits.

9  
10 Because the ALJ failed to provide specific and legitimate  
11 reasons for rejecting Dr. Gray's opinion, the case must be  
12 remanded to remedy this defect. Upon remand, the ALJ must  
13 translate Dr. Gray's workers' compensation findings into  
14 appropriate social security terminology, and then either provide  
15 specific and legitimate reasons to reject Dr. Gray's opinions or  
16 incorporate the limitations provided by Dr. Gray into the RFC  
17 determination.

## 18 19 **2. Dr. Thomas Haider**

20  
21 Plaintiff contends that the ALJ failed to articulate legally  
22 sufficient reasons for rejecting Dr. Haider's opinions. (MSC at  
23 7-9; Reply at 5). The Court agrees.

24  
25 In determining Plaintiff's RFC, the ALJ considered Dr.  
26 Haider's April 23, 2013 "Physical Residual Functional Capacity  
27 Questionnaire." (AR 860-64). As noted by the ALJ, Dr. Haider  
28 opined that Plaintiff could lift and carry up to ten pounds. (AR

1 25). Plaintiff was limited in her ability to perform  
2 manipulative maneuvers with her hands and she had marked  
3 limitation her ability to twist at the waist. (Id.). She could  
4 walk for one block without rest and be absent from work more than  
5 three times per month. (Id.). Finally, the ALJ noted that Dr.  
6 Haider's opinion regarding Plaintiff's ability to sit and stand  
7 was "unclear and confusing." (Id.).  
8

9 Although the ALJ gave "great weight" to Dr. Haider's April  
10 2013 assessment that Plaintiff could "lift and carry up to 10  
11 pounds," she gave "minimal weight to the other limitations, as  
12 they are not well supported by the objective record as a whole."  
13 (AR 25). More specifically, the ALJ rejected Dr. Haider's  
14 opinion that Plaintiff would be "absent more than three times per  
15 month [because it] is speculative and without substantial support  
16 from the record." (Id.). In support of her finding, the ALJ  
17 appears to cite to inter alia that: (1) Plaintiff retained the  
18 ability to ambulate effectively and she did not need an assistive  
19 device for ambulation or stability; (2) diagnostic imaging  
20 "revealed a moderate pathology in the lumbar spine at most" and  
21 "[e]lectrodiagnostic testing only recently confirmed mild to  
22 moderate sensory radiculopathy"; (3) there is "nothing in the  
23 record, except for [Plaintiff's] subjective complaints, showing  
24 any significant limitations in the cervical spine or the upper  
25 extremities"; and (4) Plaintiff responded well to "conservative  
26 nonnarcotic pain medications and she has not had to seek  
27 emergency or urgent care for acute symptom exacerbations." (AR  
28 25). The Court finds these reasons are not specific and

1 legitimate reasons supported by substantial evidence to reject  
2 Dr. Haider's opinion.

3  
4 As an initial matter, because the ALJ specifically found Dr.  
5 Haider's opinion regarding Plaintiff's ability to sit and stand  
6 "unclear and confusing," the ALJ had a duty to re-contact Dr.  
7 Haider for clarification rather than simply rejecting his  
8 opinion. See Tonapetyan v. Halter, 242 F.3d 1144, 1150 (9th Cir.  
9 2001) (ALJ has a duty to develop the record further when there is  
10 ambiguous evidence).

11  
12 Moreover, the ALJ erred in rejecting Dr. Haider's opinion as  
13 "speculative." As discussed above, Dr. Haider treated Plaintiff  
14 over the course of nearly nine years on a frequent and continual  
15 basis, and his opinion is supported by clinical findings and  
16 objective diagnostic testing. (AR 567-673, 799-864). Under  
17 these circumstances, the ALJ's assertion that Dr. Haider's  
18 opinion is "speculative" is not a specific and legitimate reason  
19 to reject his opinion.

20  
21 Next, although the ALJ cites to moderate pathology in  
22 Plaintiff's lumbar spine, as well as mild to moderate sensory  
23 radiculopathy to reject Dr. Haider's opinion, the ALJ fails to  
24 explain how those findings are inconsistent with Dr. Haider's  
25 opinion.

1       The ALJ's next reasoning that the record "largely" shows  
2 that Plaintiff was able to ambulate effectively and there is  
3 nothing to indicate she was reliant on an assistive device for  
4 ambulation or stability lacks substantial support in the record.  
5 Numerous progress notes from Dr. Haider reflect that Plaintiff  
6 had "difficulty walking," "difficulty changing position and  
7 getting onto the examining table," "guarding with motion,"  
8 "antalgic gate" and/or positive straight leg test. (AR 568, 572,  
9 576, 578, 582, 585, 588, 592, 595, 598, 602, 604, 606, 610, 612,  
10 614, 619, 629, 631, 635, 637, 640, 643, 647, 653, 655, 661, 665,  
11 800, 802, 810, 812, 816, 818, 823, 828, 830, 832).

12  
13       The ALJ's statement that there is "nothing in the record,  
14 except for [Plaintiff's] subjective complaints, showing any  
15 significant limitations in the cervical spine or the upper  
16 extremities" is contradicted by the record. Rather, the evidence  
17 reflects, Dr. Haider found on several occasions "tenderness in  
18 the cervical spine, left pericervical w/spasm, right pericervical  
19 w/spasm, and trapezius" and "evidence of muscle spasm at the  
20 cervical spine." (AR 572, 575, 581, 584, 587, 591, 594, 597).  
21 Dr. Haider also noted that "[r]adiographs of the cervical spine  
22 show cervical straightening as well as reversal of cervical  
23 lordosis as well as spondylosis of the C2-C4 level" and "severe  
24 muscle spasm." (AR 599). Thus, Dr. Haider did not base his  
25 opinions regarding Plaintiff's cervical spine or upper extremity  
26 limitations solely on Plaintiff's subjective complaints.

1 Finally, the finding that Plaintiff responded well to  
2 conservative non-narcotic pain medications is not entirely  
3 consistent with the record. As an initial matter, in 2008,  
4 Plaintiff underwent detoxification due to her inability to  
5 control the use of narcotic medications. As a result, Plaintiff  
6 was prescribed only non-narcotic medications after 2008. (AR  
7 576, 579, 804). Dr. Haider's progress notes reflect that the  
8 non-narcotic medications were not effective in alleviating her  
9 pain because Plaintiff continually complained of increasing or  
10 severe pain, which Dr. Haider continued to treat through 2013.  
11 (AR 568, 571, 573, 800, 802, 810, 812, 823, 825, 828, 832, 837-  
12 38, 842-43, 845, 852-53). Plaintiff also requested, and was  
13 given several trigger point or nerve block injections to help  
14 alleviate her pain. (AR 568, 810, 812, 823-24, 828, 830, 843,  
15 846, 853). Accordingly, the finding that Plaintiff "responded  
16 well to conservative nonnarcotic pain medications" is not  
17 supported by the medical evidence. Dr. Haider's progress notes  
18 chronicle Plaintiff's struggle with her back and leg pain, and at  
19 no point show sustained improvement or stabilization with  
20 conservative treatment. Thus, the ALJ's conclusion cannot be  
21 considered a specific and legitimate reason.

22  
23 On remand, the ALJ should contact Dr. Haider, obtain  
24 clarification regarding his opinion, reconsider Dr. Haider's  
25 opinion, and as necessary, revise Plaintiff's RFC.  
26  
27  
28

**VIII.**

**CONCLUSION**

Accordingly, IT IS ORDERED that judgment be entered REVERSING the decision of the Commissioner and REMANDING this matter for further proceedings consistent with this decision. IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this Order and the Judgment on counsel for both parties.

DATED: December 29, 2015

/s/  
SUZANNE H. SEGAL  
UNITED STATES MAGISTRATE JUDGE

**NOTICE**

**THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS/NEXIS, WESTLAW OR ANY OTHER LEGAL DATABASE.**